

3. The petitioner is being prosecuted under

Section 138 of N.I.Act. The said case is C.C.No.4734/S/2005 and it is pending before the learned M.M., 33rd Court, Ballard Pier, Mumbai. In the said case, process came to be issued against the petitioner under section 138 of N.I.Act.

4. The petitioner challenged the same before the Sessions Court. During pendency of the revision before the Sessions Court, some settlement was arrived at between the parties and the petitioner agreed to pay an amount of Rs.55 lakhs to the respondent by instalments by way of full and final settlement. Statement was made by the petitioner to the effect that she agreed to pay Rs.55 lakhs by instalments. The learned Sessions Judge recorded the statement of the petitioner and passed an order disposing off the revision. However, the learned Sessions Judge further observed in the said order that in case there is default by the accused (petitioner) the complaint shall stand revived and the learned Magistrate shall pass an order on the basis of complaint as if the accused has pleaded guilty

before him.

5. Being aggrieved by the later part which is underlined, this petition has been preferred. The learned Advocate for the petitioner stated that he has no grievance in respect of the order that if there is default on the part of the petitioner in paying the amount the complaint shall stand revived. The objection is only in respect of the later part.

6. The learned Advocate for respondent No.1-orig.complainant has submitted that when the accused had agreed to pay the said amount, it would amount to acceptance on the part of the accused that she is guilty. However, I am not inclined to accept the said submission. The learned Advocate for respondent No.1 has further submitted that this was an order passed by consent and hence the said order calls for no interference. However, on perusing the order it is seen that the later part was not by consent, but, it was the direction passed by the learned Sessions Judge. Hence I am inclined to set aside

the later part of the order i.e. the learned Magistrate shall proceed as if the accused pleaded guilty.

7. In view of the above, if there is default on the part of the accused the complaint will stand revived. However, the case will proceed from the stage that it had stopped before the Magistrate. Thereafter the Magistrate will proceed in accordance with law and not as if the accused had pleaded guilty. The trial to be completed expeditiously.

8. Writ Petition is disposed of accordingly.

(SMT.V.K.TAHILRAMANI, J.)